19 52. **File No.** O. Payment of Wages 1/52

P 22E Legal Deptt.

A **BRANCH**

Subject:— Opinions under the Payment of Wages Act 1936

O. Payment of Wages/52

File No.

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C O N T E N T S.

Legal Department File No. O. Payment of Wages/52.

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xx	~~3397~~ ~~1/3/52.~~	Opinions under the Payment of Wages Act 1936	
1.	3397 1/3/52.	Whether the application can be filed under Sec. 15 of the P.W. Act with Shri Dahabhai Patel who is the Managing Director of the Hindustan Newspapers Ltd. and Shri Rameshwardas Birla who is a Director of Akhil Bharat Printers Ltd. as opposite parties as they would be responsible as employers under that Section.	1-3.
2.	5330 9/4/52.	Whether under section 7(2)(j) of Payment of Wages Act 1936 a Company can make deductions from the wages of its employees on behalf of its Co-operative Stores for amount due from them in respect of purchases which they make on credit from the stores.	5.
3.	10229 19/6/52.	Payment of Wages Act 1936 Section 21 -- Application in revision against orders refusing to sanction prosecution	7-9.
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27/7

C O N T E N T S.

Legal Department File No. O. Payment of Wages / 52.

Sr. No.	R.I./O.No.	Subject	Pages.
5.	11690 / 18/7/52.	Whether under section 1(5) read with section 2(ii)(f) of the payment of wages Act 1936 the Act can be applied to open-air salt pans.	13.
6.	19048/A / 15/11/52.	Whether the deductions made in contravention of the provisions of Section 7(2)(i) of the Payment of Wages Act 1936 can be legalised by Govt.	15-17
7.	19572/A / 22/11/52.	The proposal to change enhanced court fees to an employer-opponent of the case under the Payment of Wages Act 1936 is decided against him and to credit such court fee to the revenues of Govt.	19.
8.	16637/A / 9/10/52.	Whether it can be considered that the rules deemed to have been made under article 309 of the Constitution would also subject to the provisions of the Payment of Wages Act.	21.
9.	21252/A / 17/12/52.	Attachment of property for wages --- Payment of wages Act 1936 - section 15(5)	23-25.

Rele. M.S.

Office of the R.L.A.

Under section 15 of the Payment of Wages Act, 1936, an application can be made for claims arising out of deduction from wages or delay in payment of wages, etc. Under sub-section (3) of that section, where an application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other persons responsible for the payment of wages under section 3 or give them an opportunity of being heard, etc. Under section 3 every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act, provided that, in the case the persons employed (otherwise than by a contractor) --

(a) in factories, if a person has been named as the manager of the factory under clause (e) of sub-section (1) of section 9 of the Factories Act, 1934,

(b) etc-.

the person so named, the person so responsible to the employer, or the person so nominated, as the case may be, shall be responsible for such payment. It is clear from these provisions that an application can be made against either the employer or against the manager but not against both (see Dixit v. Senior Inspector of Factories 41 B.L.R. 1283). Since no person was appointed by the Hindustan Newspapers Ltd. as manager of the factory, the claim for payment of delayed wages can be filed under section 15(3) only against the employer. It is apparent that the

Hindustan Newspapers Ltd. was the employer and not Shri Dayabhai, the Managing Director of that Company. It appears that a petition for the winding up of the Hindustan Newspapers Ltd. is already pending in the High Court and the existing assets may not be worth the wages in arrears. It is, therefore, doubtful whether, even if an application is filed against the Hindustan Newspapers Ltd., there is any hope of recovering the wages However, if an application is to be filed at all, it will have to be filed against the Hindustan Newspapers Ltd. and not against the Managing Director, Shir Dahyabha although the notice of the appliction can be served on him (see p.76 of Ghosh's Indian Company Law and Order XXIX C.P.C.).

It appears that the goodwill and copyright of the Hindustan Newspapers Ltd. has been taken over by the Akhil Bharat Printers Ltd. when the Hindustan Newspapers Ltd. was closed down. It also appears from paragraph 16 of the memorandum presented by the Bombay Union of Journalists that the Akhil Bharat Printers do not hold themselves responsible for any payment whatsoever on behalf of the Hindustan Newspapers Ltd. If this is true, there is no point in making the Akhil Bharat Printers a party to the application. The decision of Mr. Justice Tendolkar in Miscellaneous No. 13 of 1949 relied on by the office of the Commissioner of Labour has no application to the present case. Besides, under section 15(3) of the payment of Wages Act, the employer is responsible for payment of wages.

The Akhil Bharat Printers Ltd. is not the employer to be ~~int~~ liable for payment of wages of the workers due prior to the concern of Hindustan Newspapers Ltd. being taken over by the Akhil Bharat Printers Ltd. Consequently, the Akhil Bharat Printers Ltd., cannot be made a party to the application to be filed under section 15 of the Payment of Wages Act.

Id/-
29/2.
Remembrancer of Legal Affairs.

U.R. to L. & H.D. No. 3397, dated the
1st March 1952.

NSR.
25/6.

Legal Department.

When the notification No.66/48 dated the 27th March 1949 was issued it was never intended by Government that the previous concession given to co-operatives societies under notification No. 9639 B dated the 3rd May 1937 of making deductions for payment to co-operatives societies was to be taken away. That notification has not, in fact, been superseded even though the second notification was issued on the 30th May 1940 under which, what was provided was that deductions from the wages of an employed person shall not be made for the purpose of making payment due in respect of any scheme of insurance other than that maintained by the Indian Post Office unless such scheme of insurance is approved by Government. What has been done under notification No.66/48 dated the 27th March 1949, is to approve the scheme of insurance by the Co-operative Insurance Society Limited, for the purpose of deductions which were limited to 1/8th of the wages of a worker. But this notification does not affect the main notification No.9639 B dated the 3rd May 1937 which has never been superseded and which authorises deductions for payment to co-operative societies. It is stated in the Commissioner of Labour's letter that the Tatakam Co-operative Stores, Limited, has been registered under the Co-operative Societie Act. This Society will fall under the category of a consumer society as defined in section 3(3 of the Bombay Co-operative Societies Act, and

any deductions for payment to the society would be covered by the notification No.66/48, dated the 27th March 1949, read with the first notification No.9639 B dated the 3rd May 1937. If Government now intends that consumer societies should be exclused from the scope of the notification, a fresh notifcation in supersession of all the existing notifications issued under section 7(2)(j) may be issued providing for the above exclusion.

Id/-

9/4.

Remembrancer of Legal Affairs.
Additional Secretary to Government

U.R. to L.& H.D.No. 5330, dated the

9th April 1952.

MSR.
25/6.

Office of the R.L.A.

Payment of Wages Act, 1936 Section 21

application in revision against order refusing to sanction prosecution.

Section 21 of the Payment of Wages Act, 1936, provides that no court shall take cognizance of a complaint against any person for an offence under sub-section (1) of section 20, unless an application in respect of the facts constituting the offence has been presented under section 15 and has been granted wholly or in part and the authority empowered under the latter section or the appellate court granting such appliction has sanctioned the making of a complaint. Under sub-section (2) a duty is cast upon the authority or the appellate Court to give the person concerned an opportunity of showing cause against the granting of such sanction.

The question for the R.L.A's consideration is whether the High Court can be approached for correcting the decision of the authority refusing to grant sanction under section 21. That question involves two considerations : (1) whether such proceedings before the authority can be treated as criminal proceedings, and (2) whether the authority can be considered an inferior criminal court. Proceedings for the purposes of giving sanction to prosecute are treated by the Bombay High Court as criminal proceedings and are heard on the criminal side (Emperor vs. Bhatu Sadu Mali, 40 Bom.L.R. 297) In respect of the second consideration, it must be observed that the authority cannot strictly speaking be called an inferior

criminal court, although it can certainly be said to be a tribunal because it is expected to give an opportunity of hearing and come to a judicial finding. The decision in Spring Mills Ltd. v. Ambekar (51 Bom.L.R. 148) makes it clear that the authority metioned in section 21 is not a civil court. However, section 18 of the Act treats it as a civil court for all purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898. That means that, if any offence of the kind mentioned in section 195 is committed in respect of the proceedings before the authority, that authority can give sanction to prosecute and the granting of such sanction or the refusal to grant such sanction would be open to revision by a higher court, including the High Court. It would, therefore, be possible to contend that, if the High Court can take cognizance of the refusal to sanction proseuction for other offences, there is no reason why the High Court should not take cognizance of the refusal to sanction a prosecution for the particular offence contemplated by section 21. Moreover, it is apparent from section 21 that, if the appellate court were to refuse sanction, that could also be corrected in revision by the High Court. To hold that a similar order made by the authority which is subordinate to the appellate court mentioned in section 21 is not similarly open to revision would lead to this anomaly, namely, that a person who has been put in jeopardy by the granting of sanction for prosecution against

him by the appellate court has a remedy, whereas he xx would be left without a remedy if he is similarly put in jeopardy by the inferior tribunal, namely, the authority. On both these points, therefore, it is worth our while to take the matter to the High Court and canvass the whole question on the lines suggested above for maintaining the position that the High Court can correct in revesion the refusal or the granting of sanction.

Id/-

18/6

Remembrancer of Legal Affairs.

U.R. to L. & H.D., No. 10229, dated the 19th June 1952.

MSR.
25/6.

Office of the R.L.A.

Messrs. Little & Co., Solicitors to Government will be instructed to present an application and obtain the leave of the Court under section 171 of the Indian Companies Act, 1913 and also to apply to the Court for leave to attach the property in the hands of the Liquidator in execution of the direction order, after direction order, if any, is made by the Authority under the Payment of Wages Act. Ordinarily the Court is not likely to grant such leave to attach the property but will direct the claimant to file his claim before the Liquidator and ask priority for wages of the workers to the extent permissible under section 230(1)(c) of the Indian Companies Act, 1913. Under clause (b) of section 230(1) in winding up proceedings priority can be claimed for all wages or salary of any clerk or servant in respect of service rendered to the company witin the two mo ths next before the winding up order not exceeding on thousand rupees for each clerk or servant. Under clause (c) also priority can be claimed for all wages of any labourer or workmen, not exceeding five hundred rupees ~~xx~~ for each, whether payable for time or ~~xxx~~ piece work, in rspect of services rendered to the company within the two months next before the winding up order. Instead, therefore, of applying to the court for leave of the court under section 171 and then applying to the Authority under section 15(2) of the Payment of Wages Act, it would be desirable, if the Journalists and

workers themselves file their claims and ask for priority for their wages and salary under section 230(1)(b) and (c) of the Indian Companies Act; and thus avoid ~~xx~~ unnecessary costs to Government in making these applications proposed by the Commissioner of Labour.

Id/-

7/8.

Remembrancer of Legal Affairs.

U.R. to L. & H.D. No. ~~N~~6. 13087, dated the 7th August 1952.

KSR.
25/6.

Office of the R.L.A.

The question for consideration is Whether under section 1(5) read with section 2(ii)(f) of the Payment of Wages Act, 1936, the Act can be applied to open-air salt pans.

Under sub-section (5) of section 1 of the Payment of Wages Act, the State Government may, after giving three months' notice of its intention of so doing, by notification in the Official Gazette, extend the provisions of the Act or any of them to the payment of wages to any class of persons employed in any industrial establishment or in any class or group of industrial establishment. The expression "industrial establishment" as defined in clause (ii) of section 2 means of any of the establishment specified in sub-clauses (a) to (f). A workshop or other establishment in which articles are produced, adapted or manufactured with a view to their use, transport or sale, falls under clause (ii)(f) of section 2. Salt-pan is a large pan for making salt by evaporation; also a small basin the ground where salt water is naturally evaporated (Wesbster's New International Dictionary). If the salt-pans are establishments where salt is manufactured or produced for sale, they would fall within the meaning of section 2(ii)(f) of the Payment of Wages Act and under section 1(5) the Act can be extended to such industrial establishment.

Id/-
17/7
Remembrancer of Legal Affairs.

U.R. to L. & H.D. No. 11890, dated the 18th July 1952.

MSR.

Office of the R.L.A.

It appears that in pursuance of the terms of the award of the Industrial Tribunal the management of the Zenith Tin Works started it-s Provident Fund Scheme for its employees with effect from 1st Jaumary 1951 and deductions were made from the wages of the employees towards subscriptions to the said Provident Fund from 1st January 1951. Subsequently, rules of the Provident Fund were framed and the Commissioner of Income Tax, Bombay State has under section 58 B (1) of the Indian Income Tax Act, 1922, accorded sanction to the Labour Provident Fund of the Zenith Tin Works, Bombay with effect from 31st May 1951. The deductions from the wages towards the provident fund during the period from 1st January 1951 to 31st May 1951 being illegal under section7, sub-section (2) clause (i) of the Payment of Wages Act, the question of legalising the deductions has been raised. The Development Department proposes to issue an order of Government legalising the deductions. R.L.A. is requested to advise whether the order would be lawful.

Development Department has not stated any statutory provision under which the order legalising the deductions is proposed to be issued. Under section 7, sub-section (2) clause (i) deductions from wages of an employed person can be made for subscriptions to and for repayment of advances from any provident fund to which the Provident Funds Act, 1925 applies, or

any recognised provident fund as defined in section 58A of the Indian Income Tax Act, 1922, or any provident fund approved in this behalf by the State Government during the continuance of such approval. To legalise the deductions from wages of the employees with effect from 1st January 1951 in the present case what is necessary is the State Govetnment's approval of the Provident Fund Scheme under the aforesaid provision. It is ~~xxx~~ true that no subordinate legislation can be made betrospectively; but that principle will not apply to Government giving approval particularly when the employees who can resist the deductions from wages are themselves interested in the Provident Fund Scheme. In the circumstances there would be no legal objection to Government giving its approval with effect from 1st January 1951.

Id/-

18/11.

Remembrancer of Legal Affairs.

U.R. to D.D., No. 19048/A, dated the 15th November 1952.

MSR.
25/6.

Office of the R.L.A.

The R.L.A's advice is sought regarding the proposal to charge enhanced court fees to an employer-opponent if the case under the Payment of Wages Act, 1936, is decided against him and to credit such court fee to the revenues of Government. Court fee is a charge for services rendered in the progress of a cause to be paid by the party obtaining the benefit of the acts, or receiving the services, at whose instances they were performed. (See Iyer's Law Lexicon p.438). Court fee therefore is normally a levy from a person who moves the court in the first instance. It cannot be levided from a person who is brought before the Court at the instance of another party. Therefore, court fees are not levied from defendants unless they themselves agitate a separate claim. It is no douht true that the successful party can reimburse himself for the court fees paid by him when costs are awarded to him. There is a provision in the Rules issued under the Payment of Wages Act, 1936, to award costs, and the employer can be ordered to pay them to the successful worker. But such costs will be for reimbursing the worker; and any part of it representing the court fees cannot be appropriated to Government revenue. The proposal, therefore, does not appear feasible either by way of levy as a court fee or reimbursement by way of costs. However, if the intention is to penalise an employer for having unnecessarily driven

the worker to the court, that intention can be more suitably achieved by amending the Act and making provision therein for the levy of a penalty in cases where the Court considers that the workman ought not to have been compelled to seek recourse to the court. Such penalty can then be credited to Government. It is for the Development Department to consider whether the Act should be amended on these lines.

Id/-

21/11

Remembrancer of Legal Affairs.

U.R. to D.D. No. 19572/A, dated the 22nd November 1952.

MSR.
25/6.

Office of the R.L.A.

Article 313 of the Constitution provides that, until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution as an all India Service or as a service or a post under the Union or a State, shall continue in force so far as consistent with the provisions of this Constitution. At the commencement of this Constitution, the Bombay Civil Services Rules, which were framed under section 241(2) of the Government of India Act, and the provisions of the Payment of Wages Act, were in force. In Mushran v. Patil (55 B.L.R. 1009) it was held that inview of sub-section (4) of section 241 of the Government of India Act, 1935, any rules made under this section shall have effect subject to the provisions of any Acts such as the Payment of Wages Act. Consequently, the Bombay Civil Services Rules, subject to the provisions of the Payment of Wages Act, were in force at the date of the commencemnet of the Constitution and have since continued to be in force. Consequently, rule 151 or rule 152 of the Bombay Civil Services Rules, which provides for suspension allowance would be overridden by the provisions of the Payment of Wages Act and during the period of suspension, a worker in the Government Central Press would be entitled to full wages and not the subsistence allowance as

provided in the Bombay Civil Services Rules.

The view taken by the Labour and [illegible]
Housing Department is correct.

Id/-

8/10.

Remembrancer of Legal Affairs.

U.R. to the Labour and Housing Department, No. 16637/A,
dated the 9th October 1952.

MSR.
25/6.

Office of the R.L.A.

Attachment of property for wages.

Payment of Wages Act, 1936 S. 15(5).

The questions raised for R.L.A.'s advice are:

(1) Whether the property in Bombay which has already been attached by the Government of India can be attached for the claims of the State Government or in the alternative, whether a claim should be lodged with the Receiver; and

(2) What procedure should be followed in respect of the property at Calcutta.

2. Section 15(5) of the Payment of Wages Act, 1936 enacts that any amount directed to be paid under that section may be recovered, if the authority is not a magistrate, by any Magistrate to whom the authority makes an application in this behalf, as if it were a fine imposed by such Magistrate, The procedure for recovery of fines is contained in section 386 of the Criminal Procedure Code. Under the provisions of that section fine may be recovered in either or both of the following ways, that is to say, it may be recovered by -

(a) issuing a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender;

(b) issuing a warrant to the Collector of the District authorising him realise the amount by execution according to civil process against the moveable or immoveable property, or both of the defaulter. Sub-section (3) of section 386 then provides that when the Court issues a warrant to the Collector under sub-section (1),

clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code, as to execution of decrees shall apply accordingly. In the present case, the property sought to be attached is presumably immoveable property. If so, the procedure prescribed in section 386(1) (b) will have to be followed and the warrant will have to be sent to the Collector who will have to take steps for execution of the warrant as a decree by attachment of the property in the hands of the Receiver. The fact that the property is in the hands of a Receiver will be no bar to attachment (See Order 21, Rule 52 of the C.P.C.). Attention is, however, invited to the last sentence in the judgment of the High Court in Criminal Application No.1217 of 1951 where the High Court has directed that the warrant can be executed only against such property of Holland and Co. as may be in possession of Lionel Holland. If it was not, it appears, that no attachment will be possible on that property; and if there be any other property of the company in Mr. Hollands hands that can be attached. This is, however, a point which the Court issuing the attachment will have to decide.

† It is presumed that the property which the Receiver is in his possession was in the possession of Mr. Lionel Holland.

3. As regards the property at Calcutta, the position is not clear. It is stated that the Company at Calcutta was not a branch of the Company at Bombay though it was controlled by Mr. Holland. If it was an entirely independent concern, the property cannot be attached as, according to the judgment of the High Court, only the property of Holland & Co. in the hands of Lionel Holland is liable to attachment.

Id/-

15/12.

Remembrancer of Legal Affairs.

U.R. to D.D. No. 21252/A, dated the

17th December 1952.

MSR.
25/6.